United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLANT

76-2153

To Be Argued By:

GAGE ANDRETTA

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 76-2153

KHALIEB McKINNON, LAURENCE MINCY, DAVID WHEELER,

Plaintiffs-Appellants,

-against-

J.W. PATTERSON, JOSEPH W. PERRIN and ROBERT E. McCLAY, individually and in their capacities as Deputy Superintendents of Eastern New York Correctional Facility and Attica Correctional Facility, respectively, BENJAMIN WARD, in his capacity as New York Commissioner of Corrections, PETER PREISER,

Defendants-Appellees.

B P/S

Appeal from the United States District Court for the Southern District of New York (Stewart, J.)

BRIEF FOR PLAINTIFFS-APPELLANTS

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BRIEF FOR PLAINTIFFS-APPELLANTS

Issues Presented for Review

1. Did the District Court* below err in refusing to award damages to the prisoners for the constitutional deprivations visited upon them by the Corrections Officials as a result of the inadequate Adjustment Committee hearings?

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*The District Court's memorandum opinion of September 13, 1976 is set forth in the Appendix at A-14.

2. Did the District Court err in refusing to award damages to the prisoners for the failure of the Corrections Officials to afford the prisoners a review as mandated by the Rules of New York and the Adjustment Committee?

3. Did the District Court err in finding that the transfers of the prisoners to maximum security institutions were not a proximate result of the constitutionally deficient disciplinary hearings?

4. Did the District Court err in concluding that expungement of all references in the prisoners' records to the alleged misconduct and subsequent disciplinary action was inappropriate because of the mere presence of the prisoners at the scene of the dispute?

5. Did the District Court err in concluding that the prisoners must establish actual or future harm from references in their prison records to the allged misconduct and subsequent disciplinary action in order to be entitled to the equitable relief of expungement of all such references from their records?

Statement of the Case

This civil rights action was commenced on September 19, 1973 by, inter alia,* Khalieb McKinnon

("McKinnon"), Laurence Mincy, a/k/a Karim Abdul-Azim ("Mincy") and David Wheeler ("Wheeler"), each an inmate incarcerated in institutions under the jurisdiction of the New York State Department of Corrections (collectively referred to as "the prisoners"). The defendants are all present or former employees of the New York State Department of Corrections: J.W. Patterson ("Patterson"), former Superintendent of Eastern New York Correctional Facility ("Eastern"), Joseph W. Perrin ("Perrin"), Deputy Superintendent of Eastern, Robert E. McClay ("McClay"), former Deputy Superintendent of Eastern, Benjamin Ward ("Ward"), Commissioner of Corrections, and Peter Preiser ("Preiser"), former Commissioner of Corrections (collectively the "Corrections Officials"). Federal jurisdiction is based on 28 U.S.C. §1343 and the Civil Rights Act of 1871, 42 U.S.C. §1983.

A. The Complaint**

The third amended complaint alleged five claims for relief, only the first of which is relevant to the instant appeal.

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*Three other prisoners were named as plaintiffs, but their suit was subsequently dismissed as moot by order of the District Court dated May 24, 1976.

**The third amended complaint is included in the Appendix at A-5.

The complaint alleged, inter alia, that on June 5, 1973, the prisoners were incarcerated at Eastern, were assigned to and were in fact working in the laundry room at that institution (Complt. ¶11); that on that date a dispute arose between the inmates and various corrections officers over the policy concerning washing of inmates' personal clothing (Complt. ¶12); that as a result of the dispute, all the inmates present in the laundry at that time, including plaintiffs, were punished by confinement to their cells ("keeplock") without warning or notice of the imposition of this sanction (Complt. ¶22); that thereafter the prisoners remained in keeplock for approximately two weeks without an adequate hearing into the reasons for this punishment (Complt. ¶¶16, 22); and that in late June 1973 the prisoners were further punished by being transferred from Eastern, a medium security institution, to maximum security institutions without notice or any semblance of a hearing (Complt. ¶¶17-18). The prisoners asserted that the above-described events were in violation of their Fourteenth Amendment rights to due process (Complt. ¶¶25, 36); that the Corrections Officials named as defendants and their agents acting under their direct supervision directly caused the deprivations complained of (Complt. ¶¶22, 36); that as a proximate result of these deprivations the prisoners suffered substantial injuries for which they should be recompensed in damages;

that defendants Ward, Perrin and McClay should be permanently enjoined from repeating or allowing such unconstitutional actions to be repeated in the future; and that the prisoners be provided other and further relief.

B. The Decision Below

This action was tried in the District Court below before the Honorable Charles E. Stewart, sitting without a jury, on May 24-26, 1976. On September 13, 1976, Judge Stewart issued his decision, which dismissed all of the prisoners' claims except the first claim for relief involving keeplock, as to which declaratory and injunctive relief were granted.

Judge Stewart held that recent decisions of the United States Supreme Court, Meachum v. Fano, ___ U.S. ___, 49 L.Ed. 2d 451 (1976), and Montanye v. Haymes, ___ U.S. ___, 49 L.Ed. 2d 466 (1976), disposed of the prisoners' claim that they had any constitutional right to procedural due process prior to being transferred to an institution of greater security. (A-24)

As to the claim involving "keeplock," however, the District Court held that the confinement of an inmate to his cell is a substantial deprivation of a state-created right (A-27) which cannot be imposed absent a fair hearing and that the disciplinary hearings provided by the Corrections Officials were constitutionally insufficient in failing to

provide the procedural safeguards required by the due process clause of the Fourteenth Amendment (A-34).* Judge Stewart then ordered that keeplock may not be imposed as a disciplinary measure after a hearing unless 24 hours' prior written notice of the charges are furnished the inmate and no one with personal involvement in the incident upon which the charges against the inmates are based is allowed to sit as a hearing officer. (A-37) The District Court refused, however, to grant the prisoners the requested equitable relief of expungement from their prison records of any reference to the incident in question as well as the subsequent disciplinary action on the grounds that the prisoners (1) indisputably participated in the incident "in some manner" and (2) failed to demonstrate either actual harm from the existence of such references in their records or prejudice to their chances for parole. (A-38)

Finally, Judge Stewart denied the prisoners' claim for damages, reasoning that the Corrections Officials, while violating the prisoners' constitutional rights, complied with New York regulations (A-38); that although certain other activities of the Corrections Officials could

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*The Court also held that the actions of the Corrections Officials in disciplining the prisoners were in contravention of rules and regulations promulgated by the State of New York, 7 New York Code of Rules and Regulations ("N.Y.C.R.R."). (A-36-37)

not be viewed as "a good faith attempt to comply with legal requirements," the prisoners were not damaged thereby (A-38-39); and that the transfers of prisoners to maximum security institutions were not the direct responsibility of the hearing panel which keeplocked the prisoners. (A-31)

C. The Facts

On June 5, 1973, a dispute arose in the prison laundry at Eastern regarding the laundering of personal clothing belonging to the inmates (A-16). All of the prisoners had been transferred to Eastern, a medium security institution (A-15), in the spring of 1973 (A-114-116), were assigned to the laundry and were present in the laundry at that time (A-15-16). The argument centered on what the inmates perceived to be conflicting interpretations of the laundry rules (A-16). The dispute, involving all the laundry workers in a work stoppage, was an unusual event in Eastern's history. (A-16, 64, 94-95)

As a result of this dispute, all of the inmates who worked in the laundry, including the prisoners, were keeplocked (A-16-19), and misbehavior reports were filed by corrections officers on all the men (A-29), including some who were not present at the time of the incident (A-121). Within a day of the keeplock, three prison personnel, including Lieutenant Demskie, an officer who had been present at the beginning of the incident (A-34), interviewed some of the laundry room workers (A-29). Those interviewed were permanently released from keeplock and allowed to return to work. (A-29) Their misbehavior reports were withdrawn. (A-29)

The workers who were interviewed were evidently not selected by any particular pattern (Tr. 156*). No evidence was offered to show they were less involved in the incident. In fact, it appears that the men selected for the interviews were chosen at random (Tr. 156).

The misbehavior reports, which are prepared by officers having knowledge of a rules infraction, were sent to the Adjustment Committee, a committee which investigates prisoner misconduct and imposes sanctions upon inmates as a result of that misconduct (A-190). The Adjustment Committee met and held hearings on June 7, 1973. The hearings were presided over by Lieutenant Demskie, and also included another corrections officer and a civilian counselor. (A-34, 45, 53, 114-116, Plaintiffs' Exhibits 22-37**) None of the prisoners were provided with advance notice of the hearings before the Adjustment Committee or the charges made against them until their appearance before the Committee on June 7. (A-34, 43-44, 50-51, 58, 60)

Each inmate who appeared before the Committee, including the prisoners, was given keeplock for seven days, regardless of the nature of his involvement in the dispute.

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*"Tr." represents references to a part of the transcript of the trial below which is not included in the Joint Appendix.

**Plaintiffs' Exhibits (hereinafter "Plfs. Exhs.") represents references to exhibits not included in the Joint Appendix.

(Plfs. Exhs. 22-37) McKinnon, Mincy and Wheeler all had similar experiences before the Committee. (A-16-18) The interviews were brief. The prisoners were told they would be keeplocked for seven days and re-interviewed at the end of that period, and that the Committee would recommend a change in their program. None of the prisoners were allowed the opportunity to bring other persons to speak to the Committee to substantiate their versions of the dispute; and they were not informed that they could request a review of the Adjustment Committee's disposition by Superintendent Patterson. (A-16-18) None of the prisoners, and only two of the inmates keeplocked, were re-interviewed by the Adjustment Committee (Plfs. Exhs. 25, 36). The prisoners were thereafter held in keeplock with no notice of what was to happen to them or how long the punishment would continue (A-46, Tr. 87-89, 134).

In keeplock the prisoners were confined to their cells for 23 to 24 hours per day. (A-32) They were denied contact with other inmates (A-32), denied access to the general prison population and the normal routine of the institution (A-31-32), had very limited access to showers and physical activity (A-31), were not allowed to work at their prison jobs or earn wages for working, and were not permitted to engage in educational or other programs offered by the institution. (A-32)

On June 8, 1973, the day after the Adjustment Committee hearings were held, the Program Committee, which is responsible for assigning inmates to various jobs (Tr. 195), evidently met and recommended transfer of the men involved (Plfs. Exhs. 3-21).* The recommendations of the Program Committee went to the Superintendent of Eastern, Patterson, who signed them as a matter of course (A-101) and sent them on to the Department of Corrections in Albany (Tr. 319). In Albany the matter came to the attention of the then Commissioner of Corrections, Preiser (A-94-95). The transfers were approved by Preiser without investigation (A-94).

Approximately 15 to 20 days after being keeplocked, Mincy was transferred to the Clinton Correctional Facility in Dannemora, New York, McKinnon was transferred to Attica Correctional Facility, and Wheeler was transferred to the Great Meadows Correctional Facility in Comstock, New York (A-3, Tr. 33, 89, 135). All these institutions are classfied as maximum security (A-16) and all are approximately 400-500 miles from New York City, the home of all the plaintiffs (Tr. 33, 40, 67, 89, 96, 135-36).

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*The Adjustment Committee reports were routinely sent to the Program Committee for inclusion in the prisoners' files. (A-107-108) The Adjustment Committee, which had recommended job changes for the prisoners (A-29-30), had also recommended transfer for at least one inmate in the laundry (A-121) and may have recommended transfer of the other inmates involved in the laundry room dispute. (A-109, Tr. 341)

No hearings were held prior to the transfers, other than the meeting of the Adjustment Committee (Tr.35). The prisoners were administratively segregated for varying periods upon arrival at their maximum security institutions (A-60-61, Tr. 38-39, 91).

Each of the Corrections Officials* knew of the above-described laundry room incident (e.g., A-67, 94, 100, Tr. 336), which was of an unusual nature (A-64), and each was directly involved in the actions taken against the prisoners (e.g., Patterson-A-70, 71, 101; Perrin-A-69, 71; McClay-A-107, 109, Tr. 336; Preiser-A-94 and N.Y. Corrections Law §23 (Supp. 1975)).

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*Excluding Ward, who did not become Commissioner until after the events in question transpired. The prisoners withdrew their complaint as to Commissioner Ward insofar as monetary damages were requested.

ARGUMENT

I. THE DISTRICT COURT ERRED IN DENYING MONETARY DAMAGES TO THE PRISONERS

A. The District Court Erred in Refusing to Award Damages to the Prisoners as a Result of the Inadequate Hearings Afforded Them

The District Court below held that while the Adjustment Committee proceedings did not meet constitutional standards, they did comply with existing New York State regulations. (A-34) Therefore, the Court held that the defendants' actions, although violative of plaintiffs' constitutional rights, did "not demonstrate failure to act reasonably" (A-38); i.e., the Court found* that the Correctional Officials were not liable because they had established that their actions were taken in "good faith." See, e.g., Mukmuk v. Comm'r of Dep't of Correctional Services, 529 F.2d 272 (2d Cir. 1976); Knell v. Bensinger, 522 F.2d 720 (7th Cir. 1975).

Of course, in order to deny monetary damages on the basis of a good faith defense, the Court must have been satisfied that a prima facie case existed for the plaintiffs, since good faith in a civil rights case is an affirmative defense. See, e.g., Pierson v. Ray, 386 U.S. 547, 556-57 (1966); Glasson v. City of Louisville, 518 F.2d 899, 907

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*Since this "finding" involves application of a legal standard to basic facts undisputed or reasonably found, "reversal is

(footnote cont. on next page.)

(6th Cir. 1975); Federal Rules of Civil Procedure 8(c). Thus, the Court below found that defendants, acting under color of State law with the requisite degree of personal involvement, deprived plaintiffs of certain constitutional rights. (See, e.g, A-32, 36, 38.)

The record below amply supports the Court's finding in this regard. (See A-44, 47, 49, 64-72, 79-82, 90, 94-96, 98, 100-108.) Thus the only question before this Court is whether the individual defendants sustained their burden of demonstrating, by a preponderance of the evidence, that they acted in good faith. See, e.g., Skinner v. Spellman, 480 F.2d 539, 540 n. 1 (4th Cir. 1973).

The District Court held that "the procedures accorded to plaintiffs prior to keeplock violated their Fourteenth Amendment Rights." (A-37) The Court, however, held that the existence of regulations relieved the defendants of liability. (A-38)

Plaintiffs respectfully submit that this is not the law. In Wood v. Strickland, 420 U.S. 308, 322 (1975), the Supreme Court stated that:

(footnote cont. from preceding page.)

not limited to results that are 'clearly erroneous'; it is enough that the appellate court should be convinced. . . that the result does not jibe with the applicable rule of law." In re Hygrade Envelope Corp., 366 F.2d 584, 588 (2d Cir. 1966) (footnote omitted). See also Leather's Best, Inc. v. S.S. Mormaclynx, 451 F.2d 800 (2d Cir. 1971).

> "A school board member, who has voluntarily undertaken the task of supervising the operation of the school and the activities of the students, must be held to a standard of conduct based not only on permissible intentions, but also on knowledge of the basic, unquestioned constitutional rights of his charges."

In Wood, the school board officials also acted in accordance with existing regulations. Yet that decision makes clear than an official who undertakes to be responsible for the well-being of literally thousands of people also undertakes to know what the rights of his charges are.

In Knell v. Bensinger, 522 F.2d 720 (7th Cir. 1975), the United States Court of Appeals for the Seventh Circuit concluded that the Wood standard applied to challenges to the official conduct of correctional administrators. Id. at 724. The Court further stated that:

> "In requiring that the actions of state officials meet an objective good faith standard as well as the traditional bad motive test, the Supreme Court sought to insure that careless disregard or negligent ignorance of clear constitutional rights and duties would not be insulated from liability under the policy of encouraging the reasoned exercise of official discretion by government officers of their duties. . . [I]n exercising their informed discretion, officials must be sensitive and alert to the protections afforded prisoners by the developing judicial scrutiny of prison conditions and practices." Id. at 725.

In Knell, the Court was faced with an issue similar to that found in the instant case. There, a challenged policy which restricted an inmate's right to access to the courts was found violative of prior Supreme Court rulings in Ex Parte Hull, 312 U.S. 546, 549 (1941), Johnson v. Avery, 393 U.S. 483 (1969) and Younger v. Gilmore, 404 U.S. 15 (1971). The Court reasoned, however, that the Supreme Court cases held only that a state would not absolutely deny an inmate the right of access to the courts. The offensive policy in Knell only denied such access to the inmate-plaintiffs for a period of fifteen days. Since at least one decision had upheld limited restrictions on this right, Hatfield v. Bailleaux, 290 F.2d 632 (9th Cir.), cert. denied, 368 U.S. 862 (1961), the Knell Court concluded that the constitutional principles announced in its decision were not settled. Thus although the Court found the prison policy unconstitutional, it could not conclude that defendants had acted unreasonably. As this Court has stated: "When we deal with . . . constitutional rights of prisoners [other than eighth amendment rights], however, there may be a sharper distinction between conduct that was allowable at the time and conduct that had already been declared beyond the limits of disciplinary prerogatives." Mukmuk v. Comm'r of Dept. of Correctional

Services, 529 F.2d 272, 278 (2d Cir. 1976).

Unlike Knell, the constitutional deprivations in the instant case involved basic rights which the Corrections Officials should be charged with knowledge of under the standard set forth in Wood v. Strickland, supra. The facts clearly establish that the Corrections Officials denied the prisoners any prior notice of their Adjustment Committee hearings as well as an impartial adjudication of their alleged infraction of prison rules, and the District Court so found. (A-34)

The facts as adduced at trial are as follows: The Adjustment Committee, comprised of Lieutenant Demskie, another corrections officer and a civilian counselor, called the prisoners and other inmates to a general area for separate "hearings." (A-34, 45, 53, 114-16, Plfs. Exhs. 22-37) No prior notice was given to the prisoners concerning the hearings, nor were any written charges provided to them. (A-34, 43-44, 50-51, 58, 60) They were not told of the sanctions which could be imposed or that they had a right to have the Committee's decision reviewed by Superintendent Patterson. (A-31)

The undisputed testimony demonstrates that Lieutenant Demskie, who presided over the "hearings," was also present at the laundry room when the incident in question occurred (A-34) and, at the direction of the Corrections Officials, interviewed

certain inmates selected for more favorable treatment prior to the Adjustment Committee hearings. (A-29) On the basis of these facts, the District Court held that the procedures accorded the prisoners violated their Fourteenth Amendment rights (A-34), yet concluded that since these procedures did not contravene any explicit New York regulation, the Corrections Officials must have acted reasonably so as to preclude an award of damages. (A-38)

Plaintiffs submit that the mere existence of regulations which failed explicitly to mandate the basic essentials of fundamental fairness cannot relieve defendants of liability in this case.

The existence of the right to fairness in prison disciplinary proceedings is well established now and was well-established in June of 1973. A prisoner faced with substantial deprivations must be accorded such process as is "minimally fair and rational." Sostre v. McGinnis, 442 F.2d 178, 192 (2d Cir. 1971), cert. denied, 404 U.S. 1049 (1972); Escoe v. Zerbst, 295 U.S. 490, 493 (1935). By holding that the Corrections Officials acted reasonably, the District Court in effect has concluded that the Corrections Officials were not charged with the knowledge that the hearings which they provided had to comport with basic notions of fundamental fairness.

The record in this case discloses that Lieutenant Demskie not only was present in the area of the disturbance (A-34), but also, prior to conducting the hearings, informally "interviewed" certain of the inmates involved in the disturbance. (A-29) Those inmates who were interviewed were selected by Lieutenant Demskie for more favorable treatment (Id.) Under the circumstances, it is quite obvious that Lieutenant Demskie could not be impartial and should not have been permitted by the Corrections Officials to preside over what were, at least nominally, adjudicatory hearings.

The barest essential of due process and fundamental fairness is the presence of an impartial decision maker. See, e.g., Clutchette v. Procunier, 497 F.2d 809, 820 (9th Cir. 1974); Landman v. Royster, 333 F. Supp. 621, 653 (E.D. Va. 1971); Kritsky v. McGinnis, 313 F. Supp. 1247, 1250 (N.D. N.Y. 1970). The Corrections Officials cannot be relieved of constructive knowledge concerning such a well-established constitutional right merely because the regulations failed to provide for it.*

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*The District Court concluded that the Corrections Officials' failure to provide impartial hearings was not unreasonable because, while the rules governing Superintendents' hearings required the hearing officer to be uninvolved in the underlying dispute (7 N.Y.C.R.R. §253.2(c)), the Adjustment Committee rules contained no such provision. (A-34) It cannot,

(footnote cont. on next page.)

Similarly, a basic element of a fair hearing is to give the accused an opportunity to formulate a defense to his actions. Cf. Armstrong v. Manzo, 380 U.S. 545, 550 (1965); Escalera v. N.Y. City Housing Authority, 425 F.2d 853 (2d Cir. 1970). Even assuming that the work stoppage in the instant case created an emergency situation, it would not have been impractical for the Corrections Officials to have provided the prisoners with some advance notice of the charges against them. It is well established that such notice is essential to a fair hearing. Cf. Escalera v. N.Y. City Housing Authority, supra.

As the District Court stated:

> "Here, New York State did not give plaintiffs the opportunity to be informed of the charges against them in advance of the hearings or to have the incident reviewed by persons who had no prior involvement with the event." (A-34) (footnote omitted)

(footnote cont. from preceding page.)

however, be rationally asserted that, under the circumstances of this case, the failure of the regulations to require impartiality released the Corrections Officials of the responsibility for ensuring fundamental fairness. That argument would only be valid if the hearings provided were truly administrative rather than disciplinary and if the range of sanctions to be imposed by the Adjustment Committee were insubstantial. But the facts of this case establish that the Adjustment Committee hearing panel was not concerned with developing a better "adjusted" inmate (A-45-46, 52-53, 59, Plfs. Exhs. 22-24, 26-35, 37). The hearing panel engaged only in the adjudicatory process of determining whether the particular inmate was guilty of the misbehavior charged. (Id.) Given the circumstances of this case, where the inmates had all been keeplocked for a serious disturbance, it is obvious that the Adjustment Committee was charged with acting as a fact-finding disciplinary body and, even under the Adjustment Committee rules, should either have been composed of impartial members or have recommended that a Superintendent's hearing be conducted. See 7 N.Y.C.R.R. §§252.5(b), 252.6.

The District Court erred, however, in determining that the existence of regulations which did not mention fairness or impartiality relieved defendants of providing these procedural safeguards. The undisputed facts of this case establish that the "hearings" afforded the prisoners, while comporting in form with the rules then in existence at Eastern, were in reality emply gestures totally lacking in fairness or good faith.* Cf., e.g., Kritsky v. McGinnis, 313 F. Supp. 1247 (N.D.N.Y. 1970).

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*For example, at the "hearings" the prisoners were never asked the reasons for the disturbance. (A-44-46, 51-54, 59-60) Nor were they given the opportunity to produce persons to verify their contentions (A-31). The panel made no attempt to interview the corrections officers involved in the laundry dispute to ascertain the reasons for the disturbance (Tr. 160, A-98-99).

The hearings as to all the prisoners lasted only a few minutes (Tr. 28, A-54, 59-60). The disposition as to the prisoners and, indeed, for every inmate present at the laundry who appeared before the Committee was identical: Keeplock for seven days with a "review" (Tr. 28, A-53, 59; Plfs. Exhs. 22-37). The prisoners were never told that, under Department of Corrections rules, they had the right to a review of their case by the Superintendent (Tr. 29, A-53-54, 60; 7 N.Y.C.R.R. §270.1(1)). The uncontradicted testimony of the prisoners established that at no time during the pro forma hearings conducted did the Committee members attempt to comply with the Department of Corrections rules regarding the purpose behind such hearings; i.e., the officers never attempted: "(a) To ascertain the full and complete facts and circumstances of the incidents of inmate misbehavior alleged in reports to the superintendent;" or "(b) To ascertain the underlying causes of each such incident." 7 N.Y.C.R.R. §252.4. The objective of the Adjustment Committee, "to secure the inmate's understanding of and adherence to the department's rules and policies governing inmate misbehavior," was ignored. 7 N.Y.C.R.R. §242.5(a).

(footnote cont. on preceding page.

Since such fairness is a fundamental concept, the defendants' actions in this case demonstrate a disregard for the prisoners' clearly enunciated constitutional rights and cannot be deemed reasonable. See Knell v. Bensinger, supra. This Court should reverse the District Court and remand the case for a hearing on damages.

B. The District Court Erred in Holding that the Failure to Review the Prisoners' Special Confinement After Seven Days Was Not of Constitutional Dimension

The District Court below, after holding that the Adjustment Committee hearings were violative of the

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Given McKinnon's testimony to the Committee that the policies in the laundry were being erratically administered (Tr. 73-74, A-52), and given the fact that Eastern was not yet functioning smoothly after the recent transition from city to state prisoners (A-95, Tr. 295, 313-14), it was incumbent upon the Adjustment Committee fully to investigate the causes for the unusual disturbance (Tr. 161, 322) which occurred, and, if appropriate, to "recommend to the superintendent such changes in programs and procedures of the facility as may seem desirable in order to eliminate, to the extent practicable, factors that tend to contribute to the causes of inmate misbehavior or to improve the methods of dealing with same." 7 N.Y.C.R.R. §252.2(d). Yet the uncontradicted testimony of the prisoners proves that the hearings were focused only on the misbehavior of the particular inmate in the laundry (A-46, 52-53, 59; Plfs. Exhs. 22-37), a disciplinary function more appropriately discharged at a Superintendent's hearing, where the procedural safeguards are more meaningful. Thus the facts establish that the hearings provided by the Corrections Officials were totally lacking in procedural fairness and constituted a "concept without meaning" in derogation of the prisoners' Fourteenth Amendment rights to fundamentally fair treatment. See, e.g., Sostre v. McGinnis, supra at 198.

prisoners' Fourteenth Amendment rights, held that "the subsequent actions of the adjustment committee were proper under New York Law" (A-35), and, accordingly, did not deprive the prisoners of a legally cognizable interest without proper procedural safeguards. (See A-35-36)

The findings of the Court as well as undisputed testimony and exhibits demonstrate that the Adjustment Committee informed the prisoners that they would each receive sentences of seven days in keeplock. (A-29-30, 114-116) They were further told that they would be called back to the Adjustment Committee for a "review" of their status at the end of the seven day period. (Id.) Finally, the Adjustment Committee Reports (A-114-16) explicitly state that the disposition of seven days' keeplock "necessitate[s] automatic review."

In response to the prisoners' claim that the failure of the Adjustment Committee to follow its own procedures violated the prisoners' constitutional rights, the Court below stated:

> "If the committee believes that an inmate's activities must be restricted, it may recommend different sanctions, including confining an inmate to his or her cell for a period not exceeding two weeks, 7 N.Y.C.R.R. Sec. 252.5. After imposition of such restriction, the
>
> > 'committee may direct that the inmate appear before it at a specific time during the period of the restriction, or at the expiration thereof. . . Where the committee is of the opion that . . . a change (in attitude) has not occurred, it may

> add restrictions. . .'
> 7 N.Y.C.R.R. Sec. 252.5(f)
> (emphasis added).
>
> Thus, despite the fact that plaintiffs were told that they would be returned to the committee in seven days, the failure to do so did not breach a statutory mandate." (A-35)

The prisoners respectfully submit that the Court below misread the applicable New York regulations and consequently erred in refusing to find a breach of rules and a constitutional deprivation.

The District Court construed §252.5 to mean that the Adjustment Committe's discretion over whether to have an inmate reappear includes the discretion to cancel such a procedure after the decision has been made at the first hearing to conduct the review and in the face of a finding by the first Adjustment Committee that such a review is necessary. (A-114-16) This construction of the rule, however, contravenes other provisions, which require that control of inmates' activities "must be as consistent as possible" (§250.2(d) and never be "arbitrary or capricious." (§250.2(e)) More importantly, the Court's reading completely ignores the mandate of §252.3(f) (see infra). A more logical reading of the above provision would indicate that the intent of the rule is to allow discretion to be exercised only in the first instance, when the initial hearing is conducted and the panel has an

opportunity to determine from the attitude of the inmate whether such a procedure might be productive. This construction would ensure that the inmate is treated rationally and would avoid the unfairness which the rules acknowledge can be counterproductive to the purpose of such disciplinary proceedings. (§250.2(a)) This reading also comports with what was apparently the practice at Eastern, where the Adjustment Committee was required to report whether a particular disposition "necessitate[d] review." (A-114-16) And Deputy Superintendent Perrin also understood that it would contravene the rules at Eastern to fail to conduct a review originally scheduled by the Adjustment Committee. (See A-89-90, 92)

Moreover, when §252.5(e)(3) is read in conjunction with §252.3(f) and the Adjustment Committee report forms (A-114-16), it is clear that in the instant case the Committee, after interviewing the prisoners "at its first meeting following the date of confinement [in their cells]," was "not prepared to make a disposition at that time," and therefore directed that "the inmate shall remain in confinement pending disposition." §252.3(f). Accordingly, the Committee was required under §252.3(f) to accord the prisoners a review after seven days:

> "Where the committee directs that the inmate shall remain in confinement pending disposition, the committee shall interview the inmate again at least once each week during the period of confinement until disposition is made." (Emphasis added.)

The Adjustment Committee on June 7 continued the keeplock sanction against the prisoners and checked the "yes" box in response to the form question whether its disposition mandated review. (A-114-16) It is therefore clear that the Committee was acting pursuant to §252.3(f), a New York regulation which establishes a mandatory review after seven days. The District Court, by ignoring the applicability of this provision, erred in concluding that the failure to conduct a review did not constitute a deprivation of a legal interest or right of the prisoners in contravention of the Fourteenth Amendment.

In Wolff v. McDonnell, 418 U.S. 539 (1974), the Supreme Court reasoned that the due process clause will protect an inmate from having a state-created right arbitrarily abrogated. Id. at 557. The regulations promulgated by the State of New York which were in effect in 1973 prohibited the confinement of an inmate to his cell for more than one week without a review of his confinement when the Adjustment Committee had not rendered a final disposition as to the inmate. 7 N.Y.C.R.R. §252.3(f). This prohibition in turn granted the inmate a state-created right not to be subjected to indefinite confinement to his cell on the pretext that his case had not been disposed of. The official recognition of the State that confinement of a prisoner to his cell must not be arbitrarily inflicted creates an interest of sufficient magnitude to call for

constitutional protection. Compare Meachum v. Fano, ___ U.S. ___, 49 L.Ed.2d 451, 461 (1976).

The prisoners in the instant case possessed such an interest. By contravening the rules of the State of New York, the Corrections Officials patently ignored this interest, even though they either knew of or should be charged with knowledge of the existence of the prisoners' rights. See A-89-90; Wood v. Strickland, supra.

It should be noted that the failure to provide a review was an important factor in this Court's determination to uphold the award of damages in United States ex rel. Larkins v. Oswald, 510 F.2d 583, 590 (2d Cir. 1975):

> "[T]he fact that he was kept five days longer than the Adjustment Committee hearing had directed and five days longer than permitted under prison regulations, 7 N.Y.C.R.R. §252.5(e)(3), undoubtedly must have created an anguish and anxiety or fear of indefinite confinement to segregation, matters for which he was entitled to be justly compensated."

Whether plaintiffs here were denied their review for malicious reasons or whether such denial was a result of callous disregard for inmates, certainly no justification exists for their extra incarceration. The Corrections Officials failed to adhere to their own regulations, and thus denied the prisoners due process of law. This Court should reverse the District Court and remand the case for a hearing to determine the damages suffered by the prisoners as a result of the Corrections Officials' unlawful actions.

C. The District Court Erred in Finding that the Transfers of the Prisoners to Maximum Security Institutions Did Not Proximately Result From the Constitutionally Deficient Hearings Accorded the Prisoners

The prisoners at the trial below claimed that the Adjustment Committee recommended the transfer of the prisoners to maximum security institutions and that these recommendations and the subsequent transfers were the proximate result of the constitutionally deficient hearings conducted by the Committee. The District Court rejected this argument, stating:

> "The evidence does not establish that the adjustment committee was directly responsible for the transfers or that it did recommend changes in programs for the plaintiffs." (A-31) (footnote omitted)

Further, the District Court would not find that the Adjustment Committee conveyed to the Program Committee information concerning the prisoners' alleged participation in the laundry room dispute. (A-31 n. 12) The prisoners respectfully submit that Judge Stewart's findings on this point are clearly erroneous and should be set aside by this Court. F. R. Civ. P. 52(a).

The evidence adduced at trial concerning the actions of the Adjustment Committee indicates that the Adjustment

Committee hearings caused the transfers. First, the hearing panel informed McKinnon and Mincy that a change in their program would be recommended (Tr. 28, 76). Lieutenant Demskie, the presiding officer at the hearings, in at least one documented instance recommended to Deputy Superintendent Perrin the "shipment" of an inmate. (A-121) The term "shipment" is synonomous with transfer. (Tr. 199) Furthermore, the fact that most of the inmates involved in the laundry room dispute were recommended for transfer the day after the Adjustment Committee hearings (Plfs. Exhs. 3-21) warrants the inference, not denied by Deputy Superintendent McClay (A-109), that the Adjustment Committee had recommended that such action be taken. This inference is buttressed by the testimony of Superintendent Patterson that the Adjustment Committee reports in question were sent to McClay, the Deputy of Program Services, who was in charge of the Program Committee. (A-107, 108) Finally, every transfer recommendation discusses the involvement of each inmate in the laundry room dispute, information which would only have officially been transmitted to the Program Committee by the Adjustment Committee, the tribunal which made such findings. (Plfs. Exhs. 3-21)

The above undisputed facts demonstrate by a preponderance of the evidence that the transfers were instigated by findings of fact made by a hearing panel that

was incapable of properly adjudicating the prisoners' conduct because of failure to accord minimally fair and rational procedures. Accordingly, this Court should set aside the findings of the District Court as clearly erroneous and direct the lower court on remand to determine the damages proximately resulting from the unconstitutional actions of the Corrections Officials, including injuries sustained by the prisoners as a result of their transfers to maximum security institutions. Cf., e.g., Monroe v. Pape, 365 U.S. 167, 187 (1961). See also Montanye v. Haymes, ___ U.S. ___, 49 L.Ed.2d 466, 471 n. 4 (1976).

II. THE DISTRICT COURT ERRED IN NOT ORDERING THAT ALL REFERENCES TO THE ALLEGED MISCONDUCT AND SUBSEQUENT DISCIPLINARY ACTION BE EXPUNGED FROM THE PRISONERS' RECORDS

A. The District Court Erred in Holding that the Mere Presence of the Prisoners at the Scene of the Dispute Renders the Remedy of Expungement Inappropriate

After holding that the hearings conducted by the Adjustment Committee did not comport with due process, and after granting the prisoners declaratory and certain equitable relief (A-27), the Court below stated:

> "Plaintiffs have also requested that we order that any reference to the laundry room incident and the subsequent disciplinary action be expunged from their records. We decline to do so because it is undisputed that plaintiffs were present in the laundry room at the time and participated in some manner in that dispute. Second, plaintiffs have not demonstrated that the existence of a record of the laundry dispute has caused them harm or that it will hinder their chances for parole." (A-38) (Emphasis added.)

The mere presence of the prisoners in the laundry room when the dispute occurred is insufficient to establish that the punishment against them was warranted, or that they deserve a "black mark" on their records. The Adjustment Committee hearings, which never seriously attempted to determine the guilt or innocence of the prisoners (see A-114-16),

were found by the Court below to be deficient. Further, the record demonstrates that the level of participation of the prisoners in the laundry room dispute is still very much at issue. (See, e.g., A-16, 115, 118)

The District Court evidently assumed that the prisoners were guilty of an infraction, perhaps because the defendants at the trial below expended great effort in parading a series of witnesses before the Court in an attempt to establish that the prisoners had indeed misbehaved. The Corrections Officials, however, cannot cure the deficient hearings at a trial three years after the fact. Cf. Strickland v. Inlow, 485 F.2d 186, 1908 n. 10 (8th Cir. 1973), vacated on other grounds, Wood v. Strickland, 420 U.S. 308 (1975). As this Court observed in United States ex rel. Larkins v. Oswald, supra, 510 F.2d at 587, the Corrections Officials "cannot now retry [the prisoners], after [their] punishment, to justify that punishment. . . ." And the lower Court should not have permitted the retention in the prisoners' records of references to disciplinary proceedings which never validly adjudicated their alleged wrongdoing simply because of testimony during the trial which was not relevant to the instant action.

In Giampetruzzi v. Malcolm, 406 F. Supp. 836, 849 (S.D.N.Y. 1975), the Court ruled that pretrial detainees confined in an administrative segregation unit without adequate

procedural safeguards were entitled to have references in their records to placement in such confinement expunged. The Court in that case further noted that the prison officials could continue the special confinement only after they followed the hearing procedures set forth in the Court's opinion.

In the instant case the prisoners have already served their time in keeplock. In fact the Adjustment Committee caused these prisoners to be confined to their cells for a period longer than was permitted by New York regulations. (See A-16; compare 7 N.Y.C.R.R. §252.3(f) with 7 N.Y.C.R.R. §252.5(e)(2))

The Fifth Circuit in Pervis v. La Marque Independent School District, 466 F.2d 1054 (5th Cir. 1972), dealt with an analagous issue. There two students were suspended from school without a hearing, then were afforded a procedurally adequate hearing three months later. The Court held that procedural due process must be given prior to imposition of serious suspensions, and ordered the students' records expunged of any reference to the disciplinary action taken.

In the instant case the District Court held that the hearings afforded the prisoners were procedurally inadequate. Once the Court so held, it could not later affirm the unconstitutional actions of the Adjustment Committee. Any references in the prisoners' records to the laundry room incident and the action of the Adjustment Committee should be

expunged. If the references are not deleted, the District Court will in effect be condoning the actions of the Corrections Officials.

Moreover, the prisoners' right to such equitable relief exists irrespective of this Court's ruling regarding the good faith of the Corrections Officials. Good faith, of course, cannot defeat a claim for equitable relif. See Strickland v. Inlow, 485 F.2d 186, 189 (8th Cir. 1973), vacated on other grounds sub nom. Wood v. Strickland, 420 U.S. 308 (1975).

Prison disciplinary records may have ramifications far beyond the punishment meted out for the offense. Mere damages, therefore, may not be wholly adequate in this case.

B. The District Court Erred in Holding that the Prisoners Must Establish Specific Damages in Order to Have the Disciplinary References in Their Records Expunged

The District Court also reasoned that since the prisoners had not demonstrated that they have suffered or will suffer harm from the references in their records to the unlawful disciplinary action taken against them, the improper notations could remain. A demonstration of actual harm, however, is unnecessary at trial, since the probability of prejudice is sufficiently great to warrant expungement. In any event, the evidence adduced at trial clearly establishes that the prisoners

have already been harmed by the inclusion in their files of the Adjustment Committee reports.

New York Correction Law §214 sets forth the criteria which a parole board must consider in deciding whether to release a prisoner. That section states, in pertinent part:

> "In addition and with respect to all prisoners, the board of parole shall have before it a report from the Warden of each prison in which such prisoner has been confined as to the prisoner's conduct in prison, with a detailed statement as to all infractions of prison rules and discipline, all punishments meted out to such prisoner and the circumstances connected therewith. . . ."

It is obvious, then, that the disciplinary records of McKinnon and Mincy* will affect their chances for parole.

The potential prejudice from such references has been recognized by the courts. In two cases involving the release of the plaintiff prisoner from administrative segregation, the United States Courts of Appeals for the Ninth and District of Columbia circuits refused to hold the actions moot because of the possibility of harm resulting from the existence of an infraction in the plaintiffs' prison records. Black v. Warden, 467 F.2d 202, 204 (9th Cir. 1972); Hudson v. Hardy, 424 F.2d 854, 856 (D.C. Cir. 1970). As the Hudson court recognized, "[The prisoner's] disciplinary record may follow

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*Wheeler has already been released on parole.

him throughout the prison system; if his punishment is without cause, he is punished anew each time his record is used against him." 424 F.2d at 956.

The possibility of damages is enough to warrant expungement in light of the prisoners' obvious inability to predict with certainty whether they will be adversely affected. But there can be no doubt that a poor disciplinary record based on an unconstituional adjudication may cause them serious harm.

In the instant case, the Adjustment Committee report forms (see A-114-16) contain a line where "Comments on review of [the misbehavior] report and inmate file" are to be made. (Id.; emphasis added); and the Classification Committee Evaluations of McKinnon and Wheeler (A-111-13) cite their poor disciplinary records as support for the recommendation by the Program Committee and Superintendent Patterson that they be transferred to maximum security instititions. Indeed, these same reports state as the prime reason for transfer of the prisoners their "involvement" in the "sit-down strike" of the laundry workers, a finding undoubtedly stemming from the Adjustment Committee reports, which were sent to the Program Committee (A-107), the tribunal responsible for instituting job changes within the prison and recommending transfers of inmates to other facilities. (Tr. 195, 349) It is therefore apparent that the references in the prisoners'

records to the unconstitutional adjudications have already caused them harm* and should have been ordered expunged.

CONCLUSION

The prisoners respectfully submit that the District Court below erred in refusing to award damages and expunge all references to the incident in question and the resulting disciplinary action from their prison records. Accordingly, the prisoners request this Court to rule that (1) the Corrections Officials have not established their good faith; (2) the Court below should determine the amount of damages which should be awarded to the prisoners; (3) the District Court should include in its computation of damages the injuries to the prisoners resulting from their transfers to maximum security institutions; and (4) all references to the alleged misconduct of the prisoners in the laundry room and to the disciplinary action which followed should be expunged from their prison records.

Respectfully Submitted,

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*See Montanye v. Haymes, ___ U.S. ___, 49 L.Ed.2d 466, 470 n. 4 (1976).

ADDENDUM

New York Corrections Law §23

New York Corrections Law §214

New York Code of Rules and Regulations - Title 7, Rules of the Department of Correctional Services in effect in June 1973

- Chapter 5, Part 250

- Chapter 5, Part 270, §270.1

New York Corrections Law

§23. Transfer of inmates from one correctional facility to another; treatment in outside hospitals

1. The commissioner of corrections shall have the power to transfer inmates from one correctional facility to another. Whenever the transfer of inmates from one correctional facility to another shall be ordered by the commissioner of correction, the superintendent of the facility from which the inmates are transferred shall take immediate steps to make the transfer. The transfer shall be in accordance with rules and regulations promulgated by the department for the safe delivery of such inmates to the designated facility.

* * *

New York Corrections Law

§214. Method of release

4. In addition and with respect to all prisoners, the board of parole shall have before it a report from the warden of each prison in which such prisoner has been confined as to the prisoner's conduct in prison, with a detailed statement as to all infractions of prison rules and discipline, all punishments meted out to such prisoner and the circumstances connected therewith, as well as a report from each such warden as to the extent to which such prisoner has responded to the efforts made in prison to improve his mental and moral condition. . . .

* * *

SUBCHAPTER A

Procedures for Implementing Standards of Inmate Behavior

PART

PART 250

SCOPE AND INTERPRETATION OF RULES AND REGULATIONS IN THIS CHAPTER

(Statutory authority: Correction Law, §§ 112, 137)

Historical Note

Part (§§ 250.1-250.2) added, filed June 30, 1970; renum. Part 155 (§§ 155.1-155.2), new Part (§§ 250.1-250.4) added, filed Sept. 17, 1970 eff. Oct. 19, 1970.

Section 250.1 Applicability. (a) The rules and regulations set forth in this Chapter establish procedures to supplement the department's ordinary programs for inmate indoctrination, guidance, counseling and training. They are to be applied for the following purposes:

(1) Implementation of standards of behavior where an inmate:

(i) violates a rule or regulation governing his behavior;

(ii) fails or refuses to comply with an instruction given to him by an employee of the department acting within the scope of his official duties in giving such instruction; or

(iii) attempts to escape or escapes or engages in any other unlawful conduct; and

(2) Administration of procedures for granting good behavior allowances ("good time").

(b) The provisions of this Chapter shall apply to all correctional facilities in the department. They do not apply to the institutions for the mentally ill and the institutions for the retarded in the department.

Historical Note

Sec. added, filed June 30, 1970; renum. 155.1, new added, filed Sept. 17, 1970 eff. Oct. 19, 1970.

250.2 General policies on discipline of inmates. (a) Disciplinary action is one of many essential elements in correctional treatment. When applied reasonably and with fairness it not only assists in protection of the health, safety and security of all persons within a correctional facility, but also is a positive factor in rehabilitation of inmates and the morale of the facility.

(b) Just as the sentencing of inmates by courts, and the techniques used for correctional treatment, must be appropriately varied to fit a complex matrix of individual circumstances and individual conditions, the disciplinary techniques

within a correctional facility must be appropriately varied to fit such factors as:

(1) the particular circumstances involved;

(2) the over-all behavior pattern of the inmate; and

(3) the problems in and the present atmosphere of the facility.

Consequently, persons vested with responsibility for disciplinary measures in facilities of the department should not establish rigid structures for disciplinary sanctions, but should consider each situation individually.

(c) Disciplinary action shall be taken only in such measures and degree as is necessary to:

(1) Regulate an inmate's behavior within acceptable limits;

(2) Assist in achieving compliance by the entire inmate population with required standards of behavior; and

(3) Preserve the confidence of all concerned (i.e., the inmate population and the staff) in the administration's sincere belief in and determination to maintain the required standards of behavior.

(d) All control of inmate activities, including disciplinary action, must be administered in a completely fair, impersonal and impartial manner and must be as consistent as possible (given the need for individualized decisions).

(e) Disciplinary measures should not be overly severe. A sound disciplinary program relies upon certainty and promptness of action rather than upon severity.

(f) Disciplinary action must never be arbitrary or capricious, or administered for the purpose of retaliation or revenge.

(g) Corporal punishment is absolutely forbidden for any purpose and under all circumstances.

(h) Mechanical means of physical restraint must never be used for disciplinary purposes. Mechanical means of physical restraint may be used only when necessary while transporting inmates within or outside of the facility, or on orders of a physician when he deems it necessary to prevent injury to the inmate or to others.

Historical Note

Sec. added, filed June 30, 1970; renum. 155.2, new added, filed Sept. 17, 1970 eff. Oct. 19, 1970.

250.3 Interpretations. (a) In any case where a situation to which these rules and regulations apply is not covered by law, or by a specific rule or regulation, policy statement, or administrative order of the department, the procedure shall be as provided in this section.

(b) Wherever practicable, the superintendent of the facility shall request a policy statement or direction from the commissioner, and such statement or direction shall be applied. The request should be in writing but may be made orally where necessary and, where made orally, shall be followed up as soon as possible with a written request.

(c) Where, in the reasonable judgment of the superintendent of a facility, action must be taken before a policy statement or direction can be obtained, the procedure to be followed shall be as determined by the superintendent. But any such determination, and a full statement of the facts and circumstances that gave rise to the determination, shall immediately be reported to the commissioner in writing.

Historical Note

Sec. added, filed Sept. 17, 1970 eff. Oct. 19, 1970.

250.4 Reports and requests for instructions. (a) Wherever it is provided in this Chapter that a report is to be made to or instructions are to be requested

from the superintendent of a facility, the superintendent may designate an employee to receive such report or to furnish such instructions and the report or request shall be made to such employee. Instructions given by an employee designated to furnish same shall be deemed to be instructions given by the superintendent. Each such designation and any changes and amendments thereto shall be in writing and a copy thereof shall be forwarded to the commissioner.

(b) Wherever it is provided in this Chapter that a report is to be made to or instructions are to be requested from the commissioner, the commissioner may designate a deputy commissioner or other employee to receive such report or to furnish such instructions and the report or request shall be made to such person. Instructions given by an employee designated to furnish same shall be deemed to be instructions given by the commissioner. Each such designation and changes and amendments thereto shall be set forth in policy statements of the department.

Historical Note

Sec. added, filed Sept. 17, 1970 eff. Oct. 19, 1970.

PART 251

INITIAL ACTIONS IN CASES OF INMATE MISBEHAVIOR

Historical Note

Part (§§ 251.1-251.6) added, filed Sept. 17, 1970 eff. Oct. 19, 1970.

Section 251.1 General policy. All incidents of inmate violations of rules and regulations, inmate misbehavior and inmate failure or refusal to comply with an instruction given by an employee acting within the scope of his official duties shall be handled as quietly and routinely as possible, giving due regard to danger to life, health, security and property.

Historical Note

Sec. added, filed Sept. 17, 1970 eff. Oct. 19, 1970.

251.2 Use of physical force. (a) The greatest caution and conservative judgment shall be applied in determining: (1) whether physical force is necessary; and (2) the degree of such force that is necessary. Each employee is personally charged under law and the policies of the department with responsibility for acting in good faith, with reasonable care and upon probable cause.

(b) Where it is necessary to use physical force, only such degree of force as is reasonably required shall be used.

(c) Unless there is an immediate danger to safety, security or property, an employee shall notify the superintendent of any situation where the use of physical force may be or become necessary and shall not attempt to use physical force except in accordance with instructions received from the person designated by the superintendent to take charge of such situation.

(d) An employee shall not lay hands on or strike an inmate unless the employee reasonably believes that the physical force to be used is reasonably necessary: for self-defense; to prevent injury to person or property; to enforce compliance with a lawful direction; to quell a disturbance; or to prevent an escape.

(e) An employee may use a weapon, other than a firearm (e.g., a club or gas) only when and to the extent that the employee reasonably believes such use is necessary: for self-defense; to prevent a serious assault or gross destruction of property; to quell a disturbance; or to prevent an escape. Where it is necessary to use such a weapon the employee should take due care to avoid, to the best of his ability in the circumstances, the infliction of serious physical injury.

(f) (1) Firearms and deadly physical force shall not be used except as a last resort, and then only in situations where the employee reasonably believes that deadly physical force is necessary:

(i) to defend himself or a third person from what he reasonably believes to be the unlawful use or immediate danger of unlawful use of the kind of physical force that is readily capable of causing death or other serious physical injury;

(ii) to prevent or terminate what he reasonably believes to be the commission or attempted commission of arson; or

(iii) to prevent the escape of an inmate from the correctional facility or from custody while in transit thereto or therefrom.

(2) Where it is necessary to use a firearm, the weapon shall, whenever pos-

sible, be used to disable rather than to kill. Before aiming a firearm at any person an employee shall, whenever possible, give due warning, orally, or by firing a shot into the air or in some other readily understandable manner.

Historical Note

Sec. added, filed Sept. 17, 1970 eff. Oct. 19, 1970.

251.3 Reports of use of physical force. (a) An employee who has used physical force on an inmate shall make a written report in prescribed form immediately to the superintendent.

(b) Copies of all such reports shall be forwarded to the commissioner within 24 hours, excluding Saturdays, Sundays and holidays.

Historical Note

Sec. added, filed Sept. 17, 1970 eff. Oct. 19, 1970.

251.4 Reports of misbehavior. (a) Every incident of inmate misbehavior involving danger to life, health, security or property must be reported to the superintendent as soon as practicable.

(b) Such report shall be made in writing by the employee who has observed the incident or who has ascertained the facts, and where more than one employee has personal knowledge of the facts, a report shall be made by each such employee or, where appropriate, each such employee shall endorse his name on a report made by one employee.

(c) In any case where more than one inmate was involved in any such incident the report shall indicate the specific role played by each inmate, or if the specific role of each is unknown the report shall so indicate.

(d) Where an employee suspects but is not reasonably sure that an inmate was involved in any such incident, the report should so indicate and should set forth the facts that give rise to said suspicion.

Historical Note

Sec. added, filed Sept. 17, 1970 eff. Oct. 19, 1970.

251.5 Minor infractions. (a) An employee should deal with minor infractions, or other violations of rules and policies governing inmate behavior, that do not involve danger to life, health, security or property by counseling, warning, and/or reprimanding the inmate, and the employee need not report such minor incidents.

(b) Where an inmate persists in failure or refusal to adhere to rules and policies governing inmate behavior, or where an inmate's attitude is not satisfactory, after counseling, warning and/or reprimand, the employee should report such fact to the superintendent in the manner provided in section 251.4 of this Part.

(c) In any case where a report is not made, the employee may, in his discretion, file an infraction slip on the form and in the manner prescribed. Such slip shall be retained for reference in the file of the inmate and no further action need be taken unless the superintendent directs the adjustment committee to review the matter.

Historical Note

Sec. added, filed Sept. 17, 1970 eff. Oct. 19, 1970.

251.6 Confinement. (a) Where an officer has reasonable grounds to believe that an inmate should be confined to his cell or room because he represents an immediate threat to the safety, security or order of the facility or an immediate danger to other persons or to property, such officer shall take reasonable and appropriate steps to so confine the inmate.

(b) An inmate also may be confined to his cell or room where such action appears reasonably necessary for protection of the inmate. In any such case, however, the inmate shall not be so confined for more than 72 hours, and within such time period the inmate shall either be:

(1) transferred to another housing unit;

(2) scheduled for transfer to another facility;

(3) released from such confinement.

(c) An inmate who is unable or who refuses to participate in an assigned activity may be confined to his cell or room and, if such inmate has not been excused for medical reasons, the officer having charge of the inmate shall report such incident to the superintendent in the manner provided in section 251.4 of this Part.

(d) If the officer having charge of an inmate or if any superior officer has reasonable grounds to believe that an inmate's behavior in his cell or room is disruptive or will be disruptive of the order and discipline of the housing unit, or is inconsistent with the best interests of the inmate or of the facility, such fact shall be reported to the superintendent and the superintendent may order confinement in a special housing unit. Any such order shall be in accordance with Part 304 of Chapter VI of the rules and regulations of the department.

(e) (1) An employee who places an inmate in confinement in his cell or room or who places an inmate in a special housing unit pursuant to the provisions of this section shall report such fact, in writing, to the superintendent as soon as possible, but in any event before going off duty. Where an inmate is placed in confinement or in a special housing unit in connection with an incident required to be reported in the manner provided in section 251.4 of this Part, the report of confinement shall be entered upon and made part of the report of the incident.

(2) Reports of confinement shall be made even where confinement was authorized or directed by a superior officer, but need not be made where confinement:

(i) is necessitated by a medically excused inability to participate in an assigned activity; or

(ii) was directed by the adjustment committee or by a decision in a superintendent's proceeding.

(f) The provisions of this section shall not be construed so as to prohibit emergency action by the superintendent of the facility and, if necessary for the safety or security of the facility, all inmates or any segment of the inmates in a facility may, on the order of the person in charge of the facility, be confined in their cells or rooms for the duration of any period in which the safety or security of the facility is in jeopardy. In any such case the superintendent shall immediately notify the commissioner.

Historical Note

Sec. added, filed Sept. 17, 1970 eff. Oct. 19, 1970.

PART 252

ADJUSTMENT COMMITTEES

Historical Note

Part (§§ 252.1-252.6) added, filed Sept. 17, 1970 eff. Oct. 19, 1970.

Section 252.1 Establishment of adjustment committees. (a) There shall be in each correctional facility, other than the facilities designated as youth camps and as residential treatment facilities, a committee to be known as the "adjustment committee".

(b) Such committee shall consist of three employees designated by the superintendent, at least one of whom shall be an officer of the rank of lieutenant or higher and one of whom shall be an employee who is not a member of the uniformed service.

(c) The superintendent may designate persons to serve permanently on such committee or may rotate membership or appoint one or more members to serve permanently and rotate other members. The superintendent also shall designate alternate members to serve in the event of absence or disability of any member.

(d) Each such committee shall have a chairman designated by the superintendent from among the members and the chairman shall be responsible for the proper operation of the committee.

(e) The names of the respective chairmen and of the members and alternates of the respective committees shall be forwarded to the commissioner by the superintendent at such times as designations or new designations are made.

Historical Note

Sec. added, filed Sept. 17, 1970 eff. Oct. 19, 1970.

252.2 Role of adjustment committee. The basic purposes of the adjustment committee of a facility shall be as follows:

(a) To ascertain the full and complete facts and circumstances of the incidents of inmate misbehavior alleged in reports to the superintendent;

(b) To ascertain the underlying causes of each such incident;

(c) To take appropriate steps to secure future compliance by such inmates with the policies of the department; and

(d) To recommend to the superintendent such changes in programs and procedures of the facility as may seem desirable in order to eliminate, to the extent practicable, factors that tend to contribute to the causes of inmate misbehavior or to improve the methods of dealing with same.

Historical Note

Sec. added, filed Sept. 17, 1970 eff. Oct. 19, 1970.

252.3 Meetings and review of reports. (a) Meetings of the adjustment committee shall be convened, pursuant to order of the superintendent, at such times as may be necessary and appropriate to carry out the work of the committee, but at least once each week.

(b) The committee shall receive promptly from the superintendent:

(1) A copy of each report of misbehavior required to be made under, or in the manner provided by, section 251.4 of this subchapter; and

(2) A copy of any infraction slip made under section 251.5 of this Subchapter that the superintendent deems appropriate for attention of the committee.

(c) The committee shall review each such report or slip for the purpose of determining: whether it is properly made out; whether it states a violation of the rules or policies governing inmate behavior; and whether the facts and circumstances are set forth with sufficient clarity and detail to furnish a basic understanding of the matter. The committee also shall review the information in the files of the facility pertaining to the background and adjustment problems of the inmates involved.

(d) Such review may be performed by the committee, as a whole, or by a member thereof assigned to such review by the chairman. In any case where the chairman is of the opinion that the report or slip is not properly made out or does not state a violation of the rules or policies governing inmate behavior, and in any case where the chairman is of the opinion that the facts and circumstances as conveyed to the committee are not sufficient to set forth a basic understanding of the incident, infraction or action taken, the chairman may direct a further investigation, and the chairman may interview any employee or inmate for such purpose. Information obtained in any such interview shall be summarized, in writing, in a supplementary report to be prepared by the chairman and, wherever practicable, such supplementary report shall be countersigned by the person who supplied the information.

(e) The committee also shall endeavor to obtain from the inmate as full and complete an explanation of his behavior in the situation as possible. Such information shall be summarized, in writing, by the chairman and the summary shall be annexed to the report. After interviewing the inmate, the committee may adjourn the matter for further investigation, or may dispose of the matter as provided in section 252.4 of this Part.

(f) Where an inmate is being held in confinement in his cell or room or in a special housing unit, the committee shall interview the inmate at its first meeting following the date of confinement. If the committee is not prepared to make a disposition at that time, the committee shall decide at that time whether the inmate is to be released from such confinement or is to remain in confinement pending disposition of the matter. Where the committee directs that the inmate shall remain in confinement pending disposition, the committee shall interview the inmate again at least once each week during the period of confinement until disposition is made.

Historical Note

Sec. added, filed Sept. 17, 1970 eff. Oct. 19, 1970.

252.4 Dispositions by adjustment committee. (a) All dispositions by the adjustment committee shall be in accordance with the provisions of this section.

(b) The adjustment committee may adopt any one of the following courses of action:

(1) Retain control of the matter and take adjustment committee action as provided in section 252.5 of this Part;

(2) Where it appears that an inmate was not at fault in a matter, recommend to the superintendent that the report or slip be nullified; or

(3) Proceed as specified in (1) or (2) and recommend reappraisal of the program of one or more inmates in a report to the superintendent.

(c) In any case where information developed by the committee in the course of its official functions leads to the conclusion that a change in the programs or procedures of the facility appears to be desirable in order to eliminate a factor that tends to contribute to the causes of inmate misbehavior, or to improve a method of dealing with same, the committee shall transmit its recommendation for such change to the superintendent. The superintendent shall then append his comments thereto and forward the recommendation, along with his comments, to the commissioner.

(d) All dispositions made by the committee and all action, recommendations, and reports of the committee shall, except as otherwise specifically provided in this Part, be pursuant to decision of at least two members.

Historical Note

Sec. added, filed Sept. 17, 1970 eff. Oct. 19, 1970.

252.5 Adjustment committee action. (a) The objective of adjustment committee action shall be to secure the inmate's understanding of and adherence to the department's rules and policies governing inmate behavior.

(b) The action to be taken by the committee shall be based upon its evaluation of the inmate's attitude and his overall adjustment to the discipline and order that must be maintained in the facility, as well as upon the committee's evaluation of the facts and circumstances of the particular incident described in the report or slip. The committee shall not be required to make a finding as to whether or not an inmate violated any particular rule or regulation and shall not direct the action it takes toward the objective of imposing punishment for a violation. The action taken by the committee shall be focused upon the need for maintaining discipline and order within the facility and the degree to which the inmate has been and is cooperating with that need.

(c) The committee shall give guidance to the inmate with respect to the reason for the rule or policy involved and the need for compliance with the rules and policies of the department, and the committee shall point out the elements of the inmate's behavior or attitude that it deems to be unsatisfactory.

(d) Where the committee is of the opinion that the inmate has formed a genuine intention to cooperate, and that he will do so to the best of his ability without further action by the committee it may defer action in accordance with subdivision (g) of this section and so advise the inmate. In any such case the committee also shall advise the inmate that future unsatisfactory behavior may necessitate restriction of his activities or a formal charge against him.

(e) Where the committee is of the opinion that present action is necessary in order to bring the behavior of the inmate within acceptable limits, the committee may restrict the activities of the inmate to the extent appropriate for control of the inmate. For this purpose the committee may impose one or more of the following restrictions:

(1) Loss of one or more specified privileges for a specified period not exceeding 30 days;

(2) Confinement to his cell or room continuously or on certain days or during certain hours for a specified period not exceeding two weeks;

(3) Where the inmate's behavior is such that his presence in a general housing unit disrupts the order and discipline of that unit or is inconsistent with the best interests of the facility or of the inmate, confinement in a special housing unit for a specified period not exceeding one week.

(f) In any case where the committee imposes a restriction upon the activities

of an inmate the committee may direct that the inmate appear before it at a specified time during the period of the restriction, or at the expiration thereof, for the purpose of determining whether there has been any change in the attitude of the inmate that would tend to assure his future cooperation with the policies of the department. Where the committee is of the opinion that such a change has occurred, it may discontinue the restriction or restrictions imposed or any portion thereof. Where the committee is of the opinion that such a change has not occurred, it may add restrictions, or extend the period of the restrictions, within the limits specified in subdivision (e) of this section. Successive extensions of the period of a restriction or restrictions may be made as many times as necessary so long as the committee interviews the inmate at least once during the period and during each extension of the period.

(g) The committee may at any time defer action or further action with respect to an inmate for a period of up to three months. In such case the inmate shall be advised that his behavior is subject to continuous appraisal by the committee and that further action may be taken if his behavior does not improve. The officers having charge of the inmate may be notified of this fact and may be directed to forward written comments on the inmate's adjustment to the committee.

Historical Note

Sec. added, filed Sept. 17, 1970 eff. Oct. 19, 1970.

252.6 Recommendation as to superintendent's proceeding. Where an inmate persists in failure or refusal to follow the instructions of the adjustment committee, or where the committee is of the opinion that a procedure involving formal findings and punitive sanctions is necessary, the committee shall recommend to the superintendent that a superintendent's proceeding be held.

Historical Note

Sec. added, filed Sept. 17, 1970 eff. Oct. 19, 1970.

PART 253

SUPERINTENDENT'S PROCEEDING

Historical Note

Part (§§ 253.1-253.5) added, filed Sept. 17, 1970 eff. Oct. 19, 1970.

Section 253.1 Authorization. (a) In any case where there is reasonable cause to believe that an inmate's behavior has constituted a danger to life, health, security or property, or that an inmate has deliberately failed or has refused to follow the guidance and counseling of the adjustment committee, the superintendent may direct that a superintendent's proceeding be held.

(b) Such action may be taken irrespective of whether a matter is pending before the adjustment committee and irrespective of whether the committee has recommended that a proceeding be held.

Historical Note

Sec. added, filed Sept. 17, 1970 eff. Oct. 19, 1970.

253.2 Formal charge and designation of presiding officer. (a) Upon directing that a superintendent's proceeding be held, the superintendent shall designate an employee to file a formal charge against the inmate and the superintendent shall appoint a person to conduct the proceeding.

(b) The formal charge shall consist of a written specification of the particulars of the incident of behavior involved and the date, time and place of such incident. Where two or more incidents are involved, all may be incorporated in a single charge but each must be separately stated. In any case where a report has been made under Part 252 of this Chapter such report, if it sets forth the above details, may be converted into a formal charge by endorsing such fact thereon.

(c) The person appointed to conduct the proceeding should be either the superintendent or a deputy superintendent, but the superintendent may, if sufficient reason exists, designate some other employee to conduct the proceeding. The following persons shall not, however, under any circumstance be appointed to conduct the proceeding: a person who actually witnessed the incident; a person who was directly involved in the incident; the person who prepared the formal charge. A person shall not be deemed to be ineligible to conduct the proceeding solely by reason of the fact that he served as a member of the adjustment committee and reviewed or considered the incident in that capacity.

Historical Note

Sec. added, filed Sept. 17, 1970 eff. Oct. 19, 1970.

253.3 Notice and assistance to inmate. (a) The person appointed to conduct the proceeding shall designate an employee to furnish assistance to the inmate.

(b) Such employee shall deliver a copy of the charge to the inmate and shall explain the nature of the proceeding and the charge to the inmate. He also shall ask the inmate whether there is any factual matter that can be presented in his behalf and he shall investigate any reasonable factual claim the inmate may make.

(c) A written report of the action taken and the results of the investigation, if any, by the person designated to furnish assistance to the inmate shall be deliv-

ered to the person appointed to conduct the proceeding prior to the commencement of the procedure for determination of the charge.

Historical Note

Sec. added, filed Sept. 17, 1970 eff. Oct. 19, 1970.

Decisions

1. Right to judicial review
Held that although the decisions of the Correction Department are not judicially reviewable if made according to law, where petitioner prisoner's claim that he was denied a hearing conducted in accordance with the provisions of the rules and regulations of the department (7 NYCRR 253.3) before being deprived of 90 days good time is uncontroverted, an issue is presented requiring a hearing in the Supreme Court to determine whether such decision was made in violation of lawful procedure. *Matter of Salinas* v. *Henderson*, 40 AD 2d 939 (1972).

253.4 Method of determination. [Statutory authority: Correction Law, § 112]

(a) (1) The person appointed to conduct the proceeding shall first advise the inmate that:

(i) any statements made by him or information obtained from him may not be used over his objections in any criminal proceeding; and

(ii) if he chooses to remain silent, no inference may be drawn against him by virtue of his silence.

(2) The aforesaid advice shall be given by the person conducting the proceeding in the following words which shall also appear on the written specification delivered to the inmate:

"You are hereby charged with committing the acts set forth below. You may make any statements you wish on your own behalf and no statements made by you may be used against you over your objections in any criminal proceeding which may be brought against you.

You may if you wish remain silent. If you remain silent, no inference against you may be drawn by the fact that you chose to remain silent. Any charges against you must be supported by substantial evidence."

(3) The person conducting the proceeding shall then interview the inmate and ask him whether he admits or denies the substance of the charge. If the inmate admits the substance of the charge, or admits any variation of the charge that is acceptable to the interviewer, the inmate shall sign his name in the place indicated for that purpose. Where the admission accepted differs from the charge made, the points of difference shall be noted on the charge by the interviewer before the inmate signs. After the inmate has signed, as hereinabove provided, a disposition shall be made. If the inmate does not make any such admission, or refuses to sign, the proceeding shall continue as provided in this section and all further interviews shall be recorded stenographically or by an electronic recording device.

(b) The person conducting the proceeding shall interview one or more employees who witnessed or have direct knowledge of the incident and he may also interview any other person who can be of assistance in contributing relevant information.

(c) In any case where there are written reports on the incident, or where the matter has been before the adjustment committee, the reports and the records of the adjustment committee shall be deemed to be incorporated into the record of the proceeding and may be considered by the person conducting the proceeding without the necessity of formally reading same into the record.

(d) The person conducting the proceeding shall then once again interview the inmate and shall advise him of the factual circumstances that appear to support the charge and shall afford him an opportunity to comment thereon and to make any statement he may care to submit with respect to the charge.

(e) If, after hearing the inmate, the person conducting the proceeding is of the opinion that further interviews are necessary or desirable, the proceeding may be continued for such purpose.

(f) Where the person conducting the proceeding is satisfied, after hearing the inmate, that the record of the proceeding contains substantial evidence in support of the charge he shall affirm the charge and shall so advise the inmate.

(g) In any case where the person conducting the proceeding is not satisfied after considering all available evidence that the record of the proceeding contains substantial evidence to support the charge he shall either:

(1) dismiss the charge and so advise the inmate; or

(2) affirm such state of facts related to the charge made as may be supported by substantial evidence, record the state of facts affirmed, and so advise the inmate.

Historical Note

Sec. added, filed Sept. 17, 1970; amd. filed Jan. 25, 1973 eff. Feb. 15, 1973. Substituted new (a).

253.5 Dispositions. (a) Where the inmate admits and signs, or where the person conducting the hearing affirms on the basis of substantial evidence, a charge or state of facts within the criteria set forth in section 253.1, one or more of the following dispositions may be made:

(1) Reprimand;

(2) Loss of one or more specified privileges for a specified period;

(3) Temporary or permanent change of program;

(4) Confinement to cell or room or in a special housing unit continuously or on certain days or during certain hours for a specified period not exceeding 60 days;

(5) Confinement as authorized in paragraph (4) but on a diet that is not the same as the diet of other inmates; provided, however, that the inmate shall at all times be supplied with a sufficient quantity of wholesome and nutritious food;

(6) Restitution for intentional damage to State property to be made from existing and future funds standing to the credit of the inmate;

(7) Loss of a specified period of good behavior allowance ("good time"), subject to restoration as provided in Subchapter B of this Chapter;

(8) Referral to the adjustment committee for such action or further action as may be deemed appropriate by the committee (within the limits of the action the committee is authorized to take).

(b) Where the inmate admits and signs, or where the person conducting the hearing affirms on the basis of substantial evidence, a charge or state of facts which, although not within the criteria set forth in section 253.1, nevertheless amounts to a breach of rules and regulations or established standards governing inmate behavior, one or more of the following dispositions may be made:

(1) Reprimand;

(2) Any action that the adjustment committee would have been authorized to take;

(3) Temporary or permanent change of program;

(4) Restitution for intentional damage to State property;

(5) Loss of a specified period of good behavior allowance ("good time"), subject to restoration as provided in Subchapter B of this Chapter;

(6) Referral to the adjustment committee for such action or further action as may be deemed appropriate by the committee (within the limits of the action the committee is authorized to take).

(c) The disposition shall be endorsed, in writing, upon the record and the person conducting the proceeding shall personally advise the inmate of the disposition made.

Historical Note

Sec. added, filed Sept. 17, 1970 eff. Oct. 19, 1970.

SUBCHAPTER C

Review of Decisions and Actions

PART
270 Review of Decisions and Actions

PART 270

REVIEW OF DECISIONS AND ACTIONS

(Statutory authority: Correction Law, §§ 112, 137, 803, 804; L. 1970, ch. 476, § 45)

Historical Note

Part (§§ 270.1-270.6) added, filed Sept. 17, 1970 eff. Oct. 19, 1970.

Section 270.1 Review of adjustment committee decisions and actions. (a) All decisions of the adjustment committee shall be subject to review by the superintendent of the facility. Such review may be made at any time in the discretion of the superintendent, and shall be made where:

(1) an inmate requests review of a decision or action of the adjustment committee in dealing with him; or

(2) the action taken by the adjustment committee requires automatic review, as provided in subdivision (d) of this section.

(b) Upon making any such review the superintendent may, in his discretion, confirm, reverse, revise or modify any decision of the committee, and may direct the committee to proceed in accordance with his decision or in accordance with a stated policy; but the disposition made, action taken or direction given by the superintendent in any such case shall be within the limits of the dispositions and actions authorized for the committee. The superintendent shall notify the inmate in writing of his decision and, in any case where the decision of the committee is not confirmed, the superintendent shall enter his reasons for his determination in the record of the matter and furnish the commissioner and the committee with a copy of such entry.

(c) An inmate may initiate a review of a decision or action of the adjustment committee in dealing with him by making written request therefor to the superintendent of the facility. Upon receipt of any such request, the superintendent shall promptly consider and determine the matter. Nothing herein set forth shall be construed so as to require the superintendent to make more than one review of any particular decision or action of the adjustment committee.

(d) Where the action taken by the adjustment committee results through extensions (or in combination with action ordered in a superintendent's proceeding) in loss of one or more privileges for more than 60 days or in confinement to cell or room or in a special housing unit for more than 30 days, review shall be automatic and shall be as follows:

(1) The committee shall transmit the record of the matter to the superintendent as soon as a restriction that could last beyond such period is imposed

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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KHALIEB McKINNON, LAURENCE MINCY, DAVID WHEELER,

Plaintiffs-Appellants,

-against-

J.W. PATTERSON, JOSEPH W. PERRIN and ROBERT E. McCLAY, individually and in their capacities as Deputy Superintendents of Eastern New York Correctional Facility and Attica Correctional Facility, respectively, BENJAMIN WARD, in his capacity as New York Commissioner of Corrections, PETER PREISER,

Defendants-Appellees.

Docket No. 76-2153

AFFIDAVIT OF SERVICE BY MAIL

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STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

The undersigned, being duly sworn, deposes and says:

Deponent is not a party to this action, is over 18 years of age and resides at 475 Ocean Avenue, Brooklyn, New York 11226.

That on the 14th day of January, 1977, deponent served the annexed two copies of the brief for appellants and one copy of the Joint Appendix on Ralph Lewis McMurry, attorney for defendants in this action, at Two World Trade Center, New York, New York 10047, the address designated by said attorney for that purpose, by depositing a true copy of same enclosed in a postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York

Frances A. Warshaw
FRANCES A. WARSHAW

Sworn to before me this 14th
day of January, 1977.

Pauline C. Cella
Notary Public

PAULINE C. CELLA
Notary Public, State of New York
No. 43-[illegible]
Qualified in [illegible] County
Commission Expires [illegible], 1977